RALPH W. GRIFFEN
ALICE C. GRIFFEN

IBLA 72-488 Decided April 19, 1973

Appeal from a decision of the Riverside District Office refusing fee title pursuant to Mining Claims Occupancy Act application, R-951, and offering instead a lease under that Act.

Affirmed.

Federal Employees and Officers: Authority to Bind Government

An applicant can gain no right to public lands by reliance on erroneous or otherwise unauthorized statements of a Bureau of Land Management employee.

Mining Occupancy Act: Generally

Once an applicant has qualified under the Mining Claims Occupancy Act, it is the obligation of the Bureau of Land Management to determine what, if any, interest he will be offered. The decision of the Bureau will be affirmed where it rests on a rational basis and is consistent with the public interest.

APPEARANCES: James E. Barfield, Esq., Bell and LeBaron, Las Vegas, Nevada, for appellant.

OPINION BY MR. STUEBING

Ralph W. Griffen and Alice C. Griffen 1/ have appealed from a May 10, 1972, decision of the Riverside District Office, which

1/ The application was filed in the name of Ralph W. Griffen only. The original decision accepting Ralph W. Griffen's relinquishment and offering him a lifetime lease is dated April 27, 1972. On May 9, 1972, the District Office received a letter from the applicant requesting that his wife's name be included on the lease form. On May 10, 1972, the District Office rendered a second decision allowing the request and affording appellant an extra thirty days in which to complete and return the lease forms. Alice C. Griffen, by her attorney, filed a telegraphic notice of appeal which was followed by a letter from the same lawyer giving notice on behalf of Ralph W. Griffen. However, the statement of reasons refers only to the appeal of Ralph Griffen, making no reference to Alice Griffen. Nevertheless, we will regard this as the joint appeal of Ralph W. and Alice C. Griffen.

amended a decision of that office of April 27, 1972, rejecting Ralph Griffen's application to purchase five acres of the Gossam Cap No. 2 mining claim under the provisions of the Mining Claims Occupancy Act, as amended, 30 U.S.C. §§ 701-709 (1970). The rejection was based on its determination that the land is embraced within both a stock driveway and the Monache-Walker Pass National Cooperative Land and Wildlife Management Area, established by Public Land Order 2594 of January 22, 1962.

The District Office determined the applicant to be qualified under the Act and, by its delegated discretionary authority, offered the applicant a lifetime lease to the area he actually occupies, 1.19 acres. 30 U.S.C. § 701 (1970). The applicant chose to appeal the decision and has not submitted the $58 lump sum payment for the lifetime lease. He lists his reasons for appeal as:

> (1) Ralph W. Griffen was advised by a Mr. Hodgkins, of the Bureau of Land Management, Bakersfield, California, that in order to obtain fee title to the mining claim in question, Mr. Griffen would have to build a first-class mill.
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> (2) Mr. Hodgkins informed Mr. Griffen that when said mill was in operation Mr. Griffen would get the fee title to the claim in question, including the residence.
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> (3) Mr. Griffen estimates the cost of the mill to be in excess of $300,000.00.
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> (4) Mr. Griffen had, prior to the rejection of his application, expended a sum in excess of $25,000.00 for preparation to set up said mill, pursuant to his conversation with Mr. Hodgkins.
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> (5) Mr. Griffen has detrimentally relied upon the advice of Mr. Hodgkins, as an executive in the Bakersfield, California, Office of the Bureau of Land Management, and it is grossly unfair to deny this application after such a large expenditure has been made in reliance on said statements by a Bureau of Land Management representative.

Regardless of the truth of appellant's allegations concerning what he was told by the Bureau representative, the rule is that an applicant can gain no right to public land by reliance on erroneous

or unauthorized statements made by a Bureau employee. Mark Systems, Inc., 5 IBLA 257 (1972); Southwest Salt Company, 2 IBLA 81, 78 I.D. 82 (1971); Harold E. and Alice L. Trowbridge, A-30954 (January 17, 1969). Therefore, appellant receives no benefit from reliance on statements made by the employee. 43 CFR 1810.3.

It appears that appellant may have confused several provisions of law. Mining claims, for the extraction of minerals, are authorized by the Act of May 10, 1872, as amended, 30 U.S.C. §§ 22 et seq. (1970). Mill sites, deriving from the same statute, differ from mining claims in purpose, use, area, and the fact that the land must be non-mineral in character, whereas mining claims can only be located for mineral lands. 30 U.S.C. § 42 (1970). The Mining Claims Occupancy Act, is a relief measure designed to aid residents of invalid claims by permitting them to remain in residence. The principal qualification under this Act is residency, and has nothing to do with the extraction of minerals or the installation of milling equipment. The Gossam Cap No. 2 mining claim was not located at a mill site, and, in any case, it no longer exists, having been relinquished by the appellant in furtherance of his application under the Mining Claims Occupancy Act.

We might note, parenthetically, that even if the Gossam Cap No. 2 mining claim had been located as a mill site, and even if it had not been relinquished, and even if application for patent thereto had been filed under the general mining law of 1872, supra, rather than under the Mining Claims Occupancy Act, supra, the mere presence of some milling equipment, or even a complete mill, on the property would not, of itself, entitle appellant to a patent. It would have to be established that the mill was installed on the site for the bona fide purpose of conducting commercial milling of ore. There is nothing in the record to show that appellant is producing ore from any mining claims associated with this property, and the field report notes that there is no active mining being conducted in the area. However, the election of the appellant to relinquish the mining claim and to seek tenure under the Mining Claims Occupancy Act avoids the need to speculate as to his qualifications under any other provision of law.

Once the applicant has qualified under the Mining Claims Occupancy Act, it is discretionary in the Bureau to determine what, if any, interest will be offered. The Bureau is directed in the employment of its discretion to act consistent with the public interest and to rest its decision on a rational basis. Arnold E. and Eldora R. Purington, 10 IBLA 118 (1973). Here appellant attacks

the decision only with the assertion that he relied to his detriment upon representations made by a Bureau employee, assertions which cannot serve to invest him with rights not granted by law. Southwest Salt Company, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing, Member

I concur:

Joseph W. Goss, Member

I concur in the result:

Joan B. Thompson, Member.